

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KEWANEE INDUSTRIES, INC.

Plaintiff,

v.

**BROWNING FERRIS INDUSTRIES OF
OHIO, INC., GOULD ELECTRONICS
INC., and PACTIV CORPORATION,**

Defendants.

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CIVIL ACTION NO. 5:03CV1325

JUDGE ADAMS

UNITED STATES OF AMERICA,

Intervenor/Plaintiff,

v.

**BROWNING FERRIS INDUSTRIES OF
OHIO, INC., GARFIELD ALLOYS, INC.,
GENERAL ELECTRIC COMPANY,
NIKKO MATERIALS USA, INC. dba
GOULD ELECTRONICS
and PACTIV CORPORATION,**

Defendants.

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CIVIL ACTION NO. 5:03CV1325

JUDGE ADAMS

PARTIAL CONSENT DECREE

(Browning Ferris Industries of Ohio, Inc., Garfield Alloys, Inc.,
General Electric Company, Gould Electronics Inc., Nikko Materials USA, Inc.
and Pactiv Corporation)

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I. BACKGROUND

A. The Krejci Site is located along Hines Hill Road in the Cuyahoga Valley National Park, in Summit County, Ohio, north of Akron. The Site was operated as a dump and salvage yard by the Krejci family beginning in the 1940s. The United States acquired the property by condemnation in 1980. In 1986, the United States National Park Service received information regarding the possible presence of hazardous substances at the Site.

B. The United States thereafter conducted a multi-phase removal at the Site, including a Site Inspection and Preliminary Assessment of the Site; sampling drums and soils; identifying contaminants; segregating and staging the hazardous materials; dewatering and treating contaminants from an on-site lagoon; sampling and testing bulk waste piles and soil gas; removing contaminated bulk pile wastes and drummed wastes; characterizing, separating and removing unconsolidated wastes; and a Remedial Investigation and Feasibility Study ("RI/FS") for the Site.

C. The United States Department of the Interior ("DOI") completed a Remedial Investigation ("RI") Report on June 30, 2000 and completed a Feasibility Study ("FS") with respect to a final remedial action to be implemented at the Site on September 25, 2001. The remedial action to be implemented at the Site is documented in a final Record of Decision ("ROD") issued by the DOI on September 27, 2002.

D. On April 11, 1997, the United States, on behalf of the DOI, filed suit against various potentially responsible parties, including Kewanee Industries, Inc., pursuant to sections 107 and 113(f) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9607(a) & 9613(f), seeking recovery of costs incurred for response

actions at the Site. *See United States v. Chrysler Corp., et al.*, No. 5:97-CV-00894, in the United States District Court for the Northern District of Ohio, Eastern Division.

E. On April 22, 2002, a consent decree (the “U.S.-Kewanee Consent Decree”) signed by the United States, Kewanee Industries, Inc. and others, was entered by this Court. The U.S.-Kewanee Consent Decree provided, among other things, that Kewanee pay \$3.5 million plus interest in settlement. The Settling Defendants hereunder were not parties to the U.S.-Kewanee Consent Decree or any other consent decree relating to the Site prior to this Consent Decree.

F. Plaintiff Kewanee Industries, Inc. (“Kewanee”) filed a complaint in Civil Action No. 5:03CV1325, in the United States District Court for the Northern District of Ohio, Eastern Division, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613, seeking, *inter alia*, contribution for response costs incurred by Kewanee for response actions taken in connection with the release or threatened release of hazardous substances at the Site.

G. The United States has filed a complaint in intervention in this action against Settling Defendants hereunder, pursuant to Sections 107 and 113(f) of CERCLA, 42 U.S.C. §§ 9607(a) & 9613(f), seeking recovery of costs incurred and to be incurred for response actions at the Site.

H. The Settling Defendants that have entered into this Consent Decree do not admit any liability to the United States or to Kewanee arising out of the transactions or occurrences alleged in the complaints, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. The participation of any Settling Defendant in this Consent

Decree should not be construed as an admission of liability for any purpose, and the fact of such participation by the Settling Defendant shall not be admissible against such Settling Defendant at any judicial or administrative proceeding, except in an action or proceeding brought by the United States or Kewanee to enforce the terms of this Consent Decree.

I. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

J. This Court specifically finds no just reason to delay entry of this Consent Decree and expressly directs entry of this Consent Decree as a final judgment. Upon entry by this Court, this Consent Decree shall constitute final judgment for the purposes of Rule 54 of the FEDERAL RULES OF CIVIL PROCEDURE.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b), and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying Complaint(s), Settling Defendants and Kewanee Industries, Inc. waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants and Kewanee Industries, Inc. consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon and inures to the benefit of the United States, Kewanee Industries, Inc., Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "BFIOH" shall mean Browning Ferris Industries of Ohio, Inc.
- b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- c. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of a conflict between this Consent Decree and any appendix, the Consent Decree shall control.
- d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. “DOI” shall mean the United States Department of the Interior and any successor departments or agencies of the United States.

f. “DOJ” shall mean the United States Department of Justice and any successor departments or agencies of the United States.

g. “Garfield Alloys” shall mean Garfield Alloys, Inc.

h. “GE” shall mean General Electric Company.

i. “Gould” shall mean Gould Electronics Inc.

j. “Gould-Related Companies” shall mean Brush Laboratories Company, Brush Development Company, The Brush Development Company, Clevite Graphite Bronze Company, Clevite Corporation, Gould Inc. and GA-TEK Inc.

k. “Interest” unless otherwise indicated, shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

l. “Kewanee” shall mean Kewanee Industries, Inc.

m. “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

n. “Natural Resources” shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

o. “Nikko” shall mean Nikko Materials USA, Inc.

- p. “NPS” shall mean the United States National Park Service and any successor departments or agencies of the United States.
- q. “Pactiv” shall mean Pactiv Corporation.
- r. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.
- s. “Parties” shall mean the United States, Kewanee Industries, Inc. and the Settling Defendants.
- t. “Plaintiffs” shall mean the United States and Kewanee Industries, Inc.
- u. “RCRA” shall mean the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act), as amended, 42 U.S.C. § 6901, *et seq.*
- v. “Record of Decision” or “ROD” shall mean the DOI Record of Decision selecting a remedial action relating to the Site signed by the Secretary of the Interior or his/her delegate on September 27, 2002, and all attachments, modifications, or amendments thereto.
- w. “Remedial Action” shall mean those activities, except for operation and maintenance, to be undertaken to implement the Record of Decision.
- x. “Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that NPS, the U.S. Department of Justice on behalf of NPS, and Kewanee Industries, Inc. have incurred or will incur at or in connection with the Site, including interest.
- y. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

z. “Settling Defendant” shall mean Browning Ferris Industries of Ohio, Inc., Garfield Alloys, Inc., General Electric Company, Gould Electronics Inc., Nikko Materials USA, Inc. or Pactiv Corporation.

aa. “Settling Defendants” shall mean Browning Ferris Industries of Ohio, Inc., Garfield Alloys, Inc., General Electric Company, Gould Electronics Inc., Nikko Materials USA, Inc. and Pactiv Corporation.

bb. “Site” shall mean the Krejci Dump Site, encompassing approximately 47 acres, located along Hines Hill Road in Summit County, Ohio, north of Akron, and depicted generally on the map attached as Appendix A.

cc. “State” shall mean the State of Ohio.

dd. “United States” shall mean the United States of America.

ee. “U.S.-Kewanee Consent Decree” shall mean the partial consent decree signed by the United States, DaimlerChrysler Corporation, Waste Management of Ohio, Inc., Chevron U.S.A. Inc., Kewanee Industries, Inc. and The Federal Metal Company and entered by the Court on April 22, 2002.

ff. “Waste Material” shall mean (1) any “hazardous substance” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant as defined in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any “solid waste” as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

V. REIMBURSEMENT OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES

4. Payments of Response Costs and Natural Resource Damages to the United States by the Settling Defendants.

a. BFIOH. Within 30 days of the effective date of this Consent Decree or 10 days after receipt of payment instructions pursuant to Paragraph 5, whichever is later, BFIOH shall pay to the United States \$165,000.00, including \$148,500.00 in reimbursement of Response Costs incurred and to be incurred by DOI with respect to the Site and \$16,500.00 for damages, including costs of damage assessment, for injury to, destruction of, or loss of Natural Resources at the Site under the trusteeship of DOI. Payment shall be made in accordance with the procedures set forth in Paragraph 5.

b. Garfield Alloys. Within 30 days of the effective date of this Consent Decree or 10 days after receipt of payment instructions pursuant to Paragraph 5, whichever is later, Garfield Alloys shall pay to the United States \$12,500.00, including \$11,250.00 in reimbursement of Response Costs incurred and to be incurred by DOI with respect to the Site and \$1,250.00 for damages, including costs of damage assessment, for injury to, destruction of, or loss of Natural Resources at the Site under the trusteeship of DOI. Payment shall be made in accordance with the procedures set forth in Paragraph 5.

c. GE. Within 30 days of the effective date of this Consent Decree or 10 days after receipt of payment instructions pursuant to Paragraph 5, whichever is later, GE shall pay to the United States \$25,000.00, including \$22,500.00 in reimbursement of Response Costs incurred and to be incurred by DOI with respect to the Site and \$2,500.00 for damages, including

costs of damage assessment, for injury to, destruction of, or loss of Natural Resources at the Site under the trusteeship of DOI. Payment shall be made in accordance with the procedures set forth in Paragraph 5.

d. Nikko and Gould. Within 30 days of the effective date of this Consent Decree or 10 days after receipt of payment instructions pursuant to Paragraph 5, whichever is later, Nikko, on behalf of itself, Gould and any Gould-Related Companies shall pay to the United States \$60,000.00, including \$54,000.00 in reimbursement of Response Costs incurred and to be incurred by DOI with respect to the Site and \$6,000.00 for damages, including costs of damage assessment, for injury to, destruction of, or loss of Natural Resources at the Site under trusteeship of DOI. Payment shall be made in accordance with the procedures set forth in Paragraph 5.

e. Pactiv. Within 30 days of the effective date of this Consent Decree or 10 days after receipt of payment instructions pursuant to Paragraph 5, whichever is later, Pactiv shall pay to the United States \$37,500.00 including \$33,750.00 in reimbursement of Response Costs incurred and to be incurred by DOI with respect to the Site and \$3,750.00 for damages, including costs of damage assessment, for injury to, destruction of, or loss of Natural Resources at the Site under the trusteeship of DOI. Payment shall be made in accordance with the procedures set forth in Paragraph 5.

5. Procedures for Payments to the United States. Payments of amounts owed to the United States under this Consent Decree shall be made in accordance with instructions that the United States Attorney's Office for the Northern District of Ohio will provide to the Settling Defendants in accordance with Paragraph 31 within 10 days of entry of this Consent Decree by

the Court. Such instructions will specify the form of payments (wire transfer, certified check or bank check), identity of payees, manner of delivery, and addresses. Any payments received by the United States after 4:00 P.M. (Eastern Time) will be credited on the next business day. Copies of the checks and transmittal letters shall be provided to the United States as specified in Section XII (Notices and Submissions). The amounts payable for natural resource damages shall be deposited in the Department of the Interior's Natural Resource Damages and Restoration Fund, for use only to restore, replace, or acquire the equivalent of injured natural resources within the Cuyahoga Valley National Park.

6. Payments of Response Costs to Kewanee Industries, Inc. by the Settling Defendants.

a. BFIOH. Within 30 days of the effective date of this Consent Decree, BFIOH shall pay to Kewanee Industries, Inc. \$385,000.00 in resolution of Kewanee's claims. Payment shall be made in accordance with the procedures set forth in Paragraph 7.

b. Garfield Alloys. Within 30 days of the effective date of this Consent Decree, Garfield Alloys shall pay to Kewanee Industries, Inc. \$12,500.00 in resolution of Kewanee's claims. Payment shall be made in accordance with the procedures set forth in Paragraph 7.

c. GE. Within 30 days of the effective date of this Consent Decree, GE shall pay to Kewanee Industries, Inc. \$25,000.00 in resolution of Kewanee's claims. Payment shall be made in accordance with the procedures set forth in Paragraph 7.

d. Nikko and Gould. Within 30 days of the effective date of this Consent Decree or 10 days after receipt of payment instructions pursuant to Paragraph 5, whichever is later, Nikko, on behalf of itself, Gould and any predecessors or successors, shall pay to Kewanee Industries, Inc. \$140,000.00 in resolution of Kewanee's claims. Payment shall be made in accordance with the procedures set forth in Paragraph 7.

e. Pactiv. Within 30 days of the effective date of this Consent Decree, Pactiv shall pay to Kewanee Industries, Inc. \$37,500.00 in resolution of Kewanee's claims. Payment shall be made in accordance with the procedures set forth in Paragraph 7.

7. Procedures for Payments to Kewanee Industries, Inc. Payment to Kewanee Industries, Inc. under this Consent Decree shall be made by certified check or wire transfer to CONNELLY BAKER WOTRING & JACKSON L.L.P. IOLTA Client Trust Account, Account No. 0003239179; ABA Routing Number 113011258, Southwest Bank of Texas, P.O. Box 27459, Houston, TX 77227. The checks shall be delivered to: Larry Avant, CONNELLY BAKER WOTRING & JACKSON L.L.P., 700 Louisiana, Suite 1850, Houston, TX 77002, (713) 980-1724.

VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

8. Interest on Late Payments. In the event that any payments required by Section V (Reimbursement of Response Costs and Natural Resource Damages) or Section VI, Paragraph 9 (Stipulated Penalty), are not received when due, Interest shall accrue on the unpaid balance from the day after the due date through the date of payment.

9. Stipulated Penalty. If any amount due to the United States under this Consent Decree is not paid by the required date, the defaulting Settling Defendant(s) shall pay to the

United States as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$500 per day that such payment is late. Stipulated penalties are due and payable within 30 days of a Settling Defendant's receipt of written demand for payment of the penalties. All payments to the United States under this Paragraph shall be paid in accordance with the procedures set forth in Paragraph 5.

10. If the United States brings a successful action to collect any payment required by this Consent Decree, the Settling Defendant(s) against whom the enforcement action is taken shall reimburse the United States for all costs of enforcement, including but not limited to costs of attorney time.

11. Payments made under Paragraphs 9-10 shall be in addition to any other remedies or sanctions available to Plaintiffs against the Settling Defendants by virtue of any Settling Defendant's failure to comply with the requirements of this Consent Decree.

VII. COVENANTS NOT TO SUE BY PLAINTIFFS

12. In consideration of the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 13, 14 and 16 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants and the Gould-Related Companies pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except as specifically provided in Paragraph 17, the United States further covenants not to sue Settling Defendants for recovery of damages, including costs of damage assessment, recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of Natural Resources at the Site under the trusteeship of DOI. Except with

respect to future liability, these covenants not to sue shall take effect with respect to each Settling Defendant upon the receipt by the United States of the payments required by Paragraph 4 of Section V (Reimbursement of Response Costs and Natural Resource Damages). With respect to future liability, these covenants not to sue shall take effect upon certification of completion of Remedial Action by DOI pursuant to Paragraph 27 of Section X (Certificate of Completion). These covenants not to sue are conditioned upon the satisfactory performance by each Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to each Settling Defendant and the Gould-Related Companies and do not extend to any other person.

13. United States' Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel Settling Defendant(s) to perform further response actions relating to the Site or to reimburse the United States for additional costs of response, if, prior to Certification of Completion of the Remedial Action:

- a. conditions at the Site, previously unknown to DOI, are discovered, or
 - b. information, previously unknown to DOI, is received, in whole or in part,
- and DOI determines that these previously unknown conditions or information together with any other relevant information indicate that the Remedial Action is not protective of human health or the environment.

14. United States' Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel Settling Defendant(s) to perform further response actions relating to the Site or to reimburse the United States for additional costs of response if, following certification of completion of the Remedial Action:

- a. conditions at the Site, previously unknown to DOI, are discovered, or
 - b. information, previously unknown to DOI, is received, in whole or in part,
- and DOI determines that these previously unknown conditions or information together with any other relevant information indicate that the Remedial Action is not protective of human health or the environment.

15. For purposes of Paragraph 13, the information and the conditions known to DOI shall include only that information and those conditions known to DOI as of the dates the ROD was signed and set forth in the Record of Decision for the Site, and the administrative record supporting the Record of Decision. For purposes of Paragraph 14, the information and the conditions known to DOI shall include only that information and those conditions known to DOI as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record and any information received by DOI prior to Certification of Completion of the Remedial Action pursuant to the requirements of the Consent Decree signed on April 22,

2002 between the United States, Ford Motor Company, General Motors Corporation and the United States Department of Defense.

16. General Reservations of Rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against each Settling Defendant with respect to:

a. claims based on a failure by such Settling Defendant to meet a requirement of this Consent Decree;

b. liability arising from such Settling Defendant's past, present, or future disposal, release, or threat of release of Waste Material outside of the Site, other than the disposal of Waste Material from the Site at another location pursuant to a response action selected or approved by the United States;

c. liability based upon such Settling Defendant's ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, by such Settling Defendant after signature of this Consent Decree, other than as provided in the ROD or otherwise ordered by DOI; and

d. liability for damages for injury to, destruction of, or loss of natural resources under the trusteeship of any entity other than DOI, and for the costs of any natural resource damage assessments performed by or on behalf of any such entity; and

e. criminal liability.

17. Notwithstanding any other provision of this Decree, the United States, on behalf of the Department of Interior, reserves the right to institute proceedings against any Settling Defendant in this action or in a new action seeking recovery of damages, including costs of damage assessment, recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of Natural Resources at the Site under the trusteeship of DOI, based on (1) conditions with respect to the Site, unknown to the United States at the date of certification of completion of the Remedial Action, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources under the trusteeship of DOI, or (2) information received after the date of certification of completion of the Remedial Action which indicates that there is injury to, destruction of, or loss of Natural Resources under the trusteeship of DOI of a type that was unknown, or of a magnitude that was greater than was known, to the United States as of the date of lodging of the Decree.

18. In consideration of the payments that will be made by the Settling Defendants under the terms of the Consent Decree, Kewanee Industries, Inc. hereby releases any claims or causes of action against the Settling Defendants and their heirs, predecessors, successors and assigns relating to the Site. This release shall take effect with respect to each Settling Defendant upon the receipt by Kewanee Industries, Inc. of payment by that Settling Defendant required by Paragraph 6 of Section V. This release is conditioned with respect to each Settling Defendant upon the satisfactory performance by such Settling Defendant of its obligations to Kewanee

Industries, Inc. under this Consent Decree. This release extends only to the Settling Defendants and their heirs, predecessors, successors and assigns and does not extend to any other person.

VIII. COVENANTS NOT TO SUE BY SETTling DEFENDANTS

19. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site;

c. any claims arising out of response activities at the Site, including claims based on EPA's or DOI's selection of response actions, oversight of response activities or approval of plans for such activities; or

d. any claims for costs, fees, or expenses incurred in this action or related to the Site, including claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended.

These covenants not to sue, and the waivers of claims and causes of action in Paragraph 20 below, shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 13, 14, 16(b)-(d) or 17, but only to the extent that Settling Defendants' claims or causes of action arise from the same cause of action

asserted, or order issued, by the United States pursuant to those Paragraphs. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

20. Settling Defendants release any claims or causes of action against Kewanee Industries, Inc. and its heirs, predecessors, successors and assigns relating to the Site or this Consent Decree, including, but not limited to, any claims arising out of response activities at the Site. This release by each Settling Defendant shall be in effect only so long as the release in Paragraph 18 is in effect with respect to such Settling Defendant. This release extends only to Kewanee Industries, Inc. and its heirs, predecessors, successors and assigns and does not extend to any other person.

21. Settling Defendants agree to waive all claims or causes of action that each may have against any person except their respective insurers for all matters relating to the Site and with respect to each Settling Defendant's obligations under this Consent Decree, including for contribution; provided that this waiver shall not apply to claims of a Settling Defendant against a third-party that has brought an action against that Settling Defendant with respect to the Site.

IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

22. Except as provided in Paragraph 21, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person other than the Parties and Gould-Related Companies. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraphs 20 and 21 above and Paragraphs 20-22 of the U.S.-Kewanee

Consent Decree, each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

23. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants and Gould-Related Companies, are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred by any person, including the United States and Kewanee Industries, Inc. with respect to the Site, and damages, including costs of damage assessment, for injury to, destruction of, or loss of Natural Resources at the Site under the trusteeship of DOI. The “matters addressed” in this settlement do not include those Response Costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

24. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 20 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 20 days of service or receipt of any

Motion for Summary Judgment and within 20 days of receipt of any order from a court setting a case for trial.

25. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of Response Costs or damages for injury to, destruction of, or loss of Natural Resource at the Site, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided further, however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue by Plaintiffs set forth in Section VII.

26. The United States and Kewanee agree and acknowledge that this Consent Decree is consistent with Paragraph 22 of the U.S.-Kewanee Consent Decree.

X. CERTIFICATION OF COMPLETION

27. After completion of the Remedial Action and after reasonable opportunity for review and comment by the State, DOI will issue a Certification of Completion of the Remedial Action. This Certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section VII (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

XI. RETENTION OF RECORDS

28. Until 6 years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records and documents, including records or documents in electronic form, now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

29. If at any time prior to the conclusion of this document retention period, DOI requests any records or documents subject to the retention requirements of Paragraph 28, Settling Defendants shall deliver any such records or documents to DOI. Settling Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege, the work product doctrine or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide the United States with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to the United States in redacted form to mask the privileged information only. Settling Defendants shall retain all records and documents that they claim to be privileged until the United States has had a

reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

30. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed (except in the fire at the Garfield Alloys facility, which Garfield Alloys hereby certifies was unintentional on its part) or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all DOI requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and with any and all discovery requests pursuant to the FEDERAL RULES OF CIVIL PROCEDURE in this litigation.

XII. NOTICES AND SUBMISSIONS

31. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, NPS, DOJ, Kewanee Industries, Inc., and Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: [90-11-3-768]

and

Shawn P. Mulligan
Attorney-Advisor
National Park Service
1050 Walnut Street, Suite 220
Boulder, Colorado 80302
Re: [Krejci (CUVA) (CD4)]

As to Kewanee Industries, Inc.:

Mr. Richard T. Hughes
ChevronTexaco Law Department
1111 Bagby Street, Suite 4098
Houston, TX 77002

and

Daniel E. Vineyard
CONNELLY BAKER WOTRING & JACKSON L.L.P.
700 Louisiana, Suite 1850
Houston, Texas 77002

As to the Settling Defendants:

The parties and addresses set out pursuant to Paragraphs 37 and 39 herein.

XIII. EFFECTIVE DATE

32. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XIV. RETENTION OF JURISDICTION

33. This Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Consent Decree.

XV. COMPLETE AGREEMENT/APPENDICES

34. This Consent Decree and its appendices shall constitute the entire agreement of the Parties. The following appendices are attached to and incorporated into this Consent Decree: “Appendix A” is the map of the Site.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

35. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants and Kewanee Industries, Inc. consent to the entry of this Consent Decree without further notice.

36. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVII. SIGNATORIES/SERVICE

37. Each undersigned representative of a Settling Defendant to this Consent Decree, Kewanee Industries, Inc. and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is

authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

38. Each Settling Defendant and Kewanee Industries, Inc. hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants and Kewanee Industries, Inc. in writing that it no longer supports entry of the Consent Decree.

39. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the FEDERAL RULES OF CIVIL PROCEDURE and any applicable local rules of this Court, including but not limited to, service of a summons.

XVIII. FINAL JUDGMENT

40. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, Kewanee Industries, Inc. and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under FEDERAL RULES OF CIVIL PROCEDURE 54 and 58.

SIGNED at Akron, Ohio on this the _____ day of _____, 2005.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matters of *Kewanee Industries, Inc., v. Browning Ferris Industries of Ohio, Gould Electronics Inc. and Pactiv Corporation*, Civil Action No. 5:03CV1325, relating to the Krejci Dump Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 2/4/05

THOMAS L. SANSONETTI
Assistant Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

WILLIAM D. BRIGHTON
Assistant Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U. S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Date: _____

STEVEN PAFFILAS
Assistant United States Attorney
Northern District of Ohio
1800 Bank One Center
600 Superior Avenue
Cleveland, Ohio 44114

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matters of *Kewanee Industries, Inc., v. Browning Ferris Industries of Ohio, Gould Electronics Inc. and Pactiv Corporation*, Civil Action No. 5:03CV1325, relating to the Krejci Dump Superfund Site.

FOR BROWNING FERRIS INDUSTRIES OF
OHIO, INC.

Date: _____

Signature: _____

Name (Print): _____

Title: _____

Address: _____

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): _____

Title: _____

Address: _____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matters of *Kewanee Industries, Inc., v. Browning Ferris Industries of Ohio, Gould Electronics Inc. and Pactiv Corporation*, Civil Action No. 5:03CV1325, relating to the Krejci Dump Superfund Site.

FOR GARFIELD ALLOYS, INC.

Date: _____

Signature: _____

Name (Print): _____

Title: _____

Address: _____

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): _____

Title: _____

Address: _____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matters of *Kewanee Industries, Inc., v. Browning Ferris Industries of Ohio, Gould Electronics Inc. and Pactiv Corporation*, Civil Action No. 5:03CV1325, relating to the Krejci Dump Superfund Site.

FOR GENERAL ELECTRIC COMPANY

Date: _____

Signature: _____

Name (Print): _____

Title: _____

Address: _____

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): _____

Title: _____

Address: _____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matters of *Kewanee Industries, Inc., v. Browning Ferris Industries of Ohio, Gould Electronics Inc. and Pactiv Corporation*, Civil Action No. 5:03CV1325, relating to the Krejci Dump Superfund Site.

FOR PACTIV CORPORATION

Date: _____

Signature: _____

Name (Print): _____

Title: _____

Address: _____

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (Print): _____

Title: _____

Address: _____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matters of *Kewanee Industries, Inc., v. Browning Ferris Industries of Ohio, Gould Electronics Inc. and Pactiv Corporation*, Civil Action No. 5:03CV1325, relating to the Krejci Dump Superfund Site.

FOR THE PLAINTIFF
KEWANEE INDUSTRIES, INC.

Date: _____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matters of *Kewanee Industries, Inc., v. Browning Ferris Industries of Ohio, Gould Electronics Inc. and Pactiv Corporation*, Civil Action No. 5:03CV1325, relating to the Krejci Dump Superfund Site.

FOR NIKKO MATERIALS USA, INC.

Date: _____

Signature: _____

Name (Print): _____

Title: _____

Address: _____

Agent Authorized to Accept Service on Behalf of Above-Signed Party

Name (Print): _____

Title: _____

Address: _____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matters of *Kewanee Industries, Inc., v. Browning Ferris Industries of Ohio, Gould Electronics Inc. and Pactiv Corporation*, Civil Action No. 5:03CV1325, relating to the Krejci Dump Superfund Site.

FOR GOULD ELECTRONICS INC.
(a dissolved corporation)

Date: _____

Signature: _____

Name (Print): _____

Title: _____

Address: _____

Agent Authorized to Accept Service on Behalf of Above-Signed Party

Name (Print): _____

Title: _____

Address: _____

